

# HOOSIER LITIGATION BLOG

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## When Must a Trial Court Grant Leave to Amend Complaint: Ind. Trial Rule 15(A)

Our second topic for discussion today is a fairly narrow issue. Unlike our earlier discussion on contract formation and the voluntary payment doctrine, this discussion focuses solely on when a trial court abuses its discretion in denying a motion for leave to amend a complaint. Mind you, the law recognizes that “the trial court retains broad discretion to grant or deny motions to amend pleadings.” As a result, cases reversing a trial court’s denial of a motion for leave to amend are rare, but that is what we have in today’s case from the Court of Appeals of Indiana: *Rusnak v. Brent Wagner Architects*.

Some background on amending pleadings, there are two rules that primarily govern amendment: Trial Rules 15(A) & 16(J). Rule 15(A) states:

A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted, and the action has not been placed upon the trial calendar, he may so amend it at any time within thirty [30] days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be given when justice so requires. A party shall plead in response to an amended pleading within the time remaining

for response to the original pleading or within twenty [20] days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

Buttressing Rule 15(A)'s statement "when justice so requires" is caselaw recognizing that amendments "are to be liberally allowed." As the Indiana Supreme Court has recognized, this is "[c]onsistent with an underlying purpose to facilitate decisions on the merits and to avoid pleading traps[.]" The one limitation is where the result of amendment would work an undue prejudice against the opposing party.

Rule 16(J) is rarely at issue in Indiana, but I mention here to draw a juxtaposition between state and federal practice. Although many Indiana counties require case management plans, it is not a requirement specifically in the Trial Rules. Case management orders are a core part of federal pre-trial practice. In federal courts, the case management order will set a deadline for amending pleadings. Any attempt to amend a pleading after that deadline is not analyzed under the more liberal standard of Federal Rule 15, but rather under the standard of Rule 16 for amending the case management order. Nevertheless, where there is a case management plan in state court and the deadline for amendment has passed, then Rule 16(J) is implicated. A quick search did not reveal any appellate guidance on how Indiana would analyze amendment of pleadings, but, presumably, Indiana would follow the federal approach.

Now let us see why the court of appeals decided the Rusnaks should have been allowed to amend their complaint. The court began by recognizing: "We will only reverse upon an abuse of that discretion, which occurs when the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court or when the trial court has misinterpreted the law. We judge an abuse of discretion by evaluating several factors, including 'undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiency by amendment previously allowed, undue prejudice to the opposing party by virtue of the amendment, and futility of the amendment.'" Here, the court concluded that leave should have been allowed. Let us look at that analysis.

In applying the standard discussed above, the appellate court first looked to the trial court's order. The trial court concluded "that there was no evidence of bad faith, dilatory motive, or previous failure to cure deficiencies[.]" Instead, what the trial court relied on was that the defendant would be prejudiced: "it appears the trial court denied the Rusnaks' motion to amend their complaint to add a second count because it was simultaneously granting [Defendant]'s motion for summary judgment on the initial—and at that time, only—count." Consequently, the appellate court focused exclusively on whether there was sufficient prejudice to the

defendant.

The Rusnaks filed their complaint on January 8, 2014 and the parties spent the rest of the year in discovery. In February 2015, the defendant sought summary judgment to knock out the Rusnaks' case. Also in February, the Rusnaks sought a higher resolution copy of an architectural document obtained in discovery, which they received in mid-march. The Rusnaks' sought and received an extension on their deadline to respond to summary judgment on the basis of the document. In early April, they again sought and received an extension so that an engineer could review the document; they filed their response in mid April. In May, the Rusnaks "filed their motion for leave to amend their complaint to add a count of breach of contract for design defect."

In analyzing these circumstances, the court looked to a different case, *Hilliard v. Jacobs*, which affirmed the denial of leave.

In *Hilliard*, we held the trial court did not abuse its discretion in denying the plaintiff's motion for leave to file a third amended complaint in part because of prejudice to the opposing party. The motion to amend was filed three years after the original complaint, the claims to be added could have been raised in the original complaint and there was no convincing explanation for why they had not been, and the plaintiff sought leave to amend only after it was apparent the initial claims would fail.

The court found the Rusnaks situation significantly different from the facts in *Hilliard*:

Here, the Rusnaks filed their first and only motion to amend approximately eighteen months after the original complaint was filed. The statute of limitations had not yet run, no discovery deadlines or trial dates had been set in the existing litigation, and summary judgment on the initial claim, while fully briefed, had not yet been decided. The Rusnaks asserted they had only just recently discovered a basis for a design defect claim such that the claim could not have been brought in the original complaint. [Defendant]'s hope that it could 'terminate [its] involvement in this litigation' through its motion for summary judgment is insufficient to show prejudice in allowing a potentially viable, timely claim to be added. In fact, the trial court's suggestion that the Rusnaks would be able to file a completely independent action asserting the design defect claim would seem to cause more prejudice to [Defendant] than allowing a new claim to be

added in the already existing litigation by requiring it to engage in piecemeal litigation, which is disfavored. We therefore conclude the trial court abused its discretion in denying the Rusnaks' motion to amend their complaint.

Perhaps the most important takeaway, aside from providing a rare example of a case reversing on the very high "abuse of discretion" standard is the conclusion that continued litigation is not prejudice. It is a point that has been made before—the court cites a case from 1977 stating, "Claims of incurring the burden of further discovery, preparation and expense do not constitute a showing of prejudice . . . ."—but it is a strong point that was in need of removing some dust.

Join us again next time for further discussion of developments in the law.

### Sources

- *Rusnak v. Brent Wagner Architects*, ---N.E.3d---, No. 64A03–1510–PL–1741, 2016 Ind. App. LEXIS 178 (Ind. Ct. App. May 31, 2016) (Robb, J.).
- *Kimberlin v. DeLong*, 637 N.E.2d 121, 128 (Ind. 1994) (Dickson, J.), *reh'g denied* (Dec. 15, 1994).
- *Hilliard v. Jacobs*, 927 N.E.2d 393 (Ind. Ct. App. 2010) (Vaidik, J.), *trans. denied*.
- Ind. Trial Rule 15.
- Ind. Trial Rule 16.
- Federal Rule of Civil Procedure 15.
- Federal Rule of Civil Procedure 16.

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